

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation )  
Concerning the Status of Competition and ) DOCKET NO. UT-053025  
Impact of the FCC’s Triennial Review )  
Remand Order on the Competitive ) JOINT CLEC ANSWER TO QWEST’S  
Telecommunications Environment in ) PETITION FOR ADMINISTRATIVE  
Washington State. ) REVIEW OF ORDER NO. 3  
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1. Pursuant to WAC 480-07-825, Covad Communications Company, Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc. (collectively “Joint CLECs”) provide the following answer to the Petition of Qwest Corporation (“Qwest”) for Administrative Review of Order No. 3, Initial Order Requiring Disclosure of Additional Information (“Initial Order”). Qwest provides no basis on which the Commission should alter the Initial Order on the issue of Qwest’s enhancement of its ARMIS 43-08 business line data and business UNE-P line counts to include spare capacity on digital circuits, and the Commission should refuse to do so.

**DISCUSSION**

2. The first sentence of the FCC’s definition of “business line” in Rule 51.5 states, “A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC.” The FCC in paragraph 105 of the TRRO required the ILECs to calculate the total number of business lines as “ARMIS 43-08 business lines, plus business UNE-P, plus UNE-L.” The Initial Order concludes that the

“rule must be read consistently with the FCC’s statements in the TRRO.”<sup>1</sup> Accordingly, the ILECs must use actual circuits in use, not total facility capacity “when calculating ILEC-owned or UNE-P business lines” because the requirement in Rule 51.5 that “access lines connect only actual customers” is “already considered in the switched access lines ILECs report to the FCC in ARMIS 43-08 data.”<sup>2</sup> Verizon agreed, having previously calculated its own lines and business UNE-P lines strictly as the business lines reported in Verizon’s ARMIS 43-08 report.

3. Qwest, however, disagreed and now seeks Commission review of this determination. Qwest’s petition is not well-founded. Qwest added to the number of business lines it reports to the FCC in its ARMIS report by counting the full voice grade equivalent capacity of DS1 and DS3 circuits, not just the portion of those circuits that are actually used to provide voice grade service to business customers. Qwest contends that the FCC intended this result because the FCC Rule (1) defines business lines to include ILEC-owned switched access lines used by both the ILEC and CLECs and (2) also requires that a DS1 line, for example, be counted as its full capacity of 24 voice grade equivalent business lines, regardless of how many of those 24 channels are actually being used to provide voice grade service.

4. Rule 51.5 and the TRRO are not susceptible to such an interpretation. As the Initial Order accurately observes, “The FCC does not discuss modifying the ILEC-owned business lines reported in ARMIS 43-08 data, referring to the data as ‘already . . . created for other regulatory purposes,’ and providing ‘a simplified ability to obtain the necessary

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<sup>1</sup> Initial Order ¶ 34.

<sup>2</sup> *Id.*

information.”<sup>3</sup> The North Carolina Utilities Commission recently agreed, concluding “after reading and analyzing the FCC’s directives in both the TRRO and Rule 51.5 that the FCC did not intend for the ILECs’ ARMIS business line count to be altered in any way,” and that the ILEC “inappropriately adjusted the high capacity business lines represented in the ARMIS report to reflect the maximum potential use.”<sup>4</sup>

5. Qwest cites two contrary state commission decisions from the BellSouth region and argues, “This implementation methodology also yields the consistent reporting the FCC was seeking to allow it to compare the business lines submitted by each of the Regional Bell Operating Companies (RBOCs).”<sup>5</sup> Qwest, however, ignores the fact that the two largest RBOCs – Verizon and AT&T (formerly SBC) – do not follow this “implementation methodology,” and indeed, if AT&T’s acquisition of BellSouth is approved, Qwest will be the only RBOC that proposes such a methodology. Qwest’s “consistency” argument thus supports the Initial Order’s determination.<sup>6</sup>

6. Qwest further contends that its proposal to augment its ARMIS 43-08 data is consistent with the requirement that business lines include “only those access lines connecting end-user customers with incumbent LEC end-offices for switched services” because the entire DS1 circuit connects an end-user customer and the end office and the excess capacity on that circuit can be turned up at any time. Qwest cites to no provision

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<sup>3</sup> *Id.* ¶ 33 (quoting TRRO para. 105).

<sup>4</sup> *In re Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc. and Competing Local Providers Due to Changes of Law*, NC Utils. Comm’n Docket No. P-55, SUB 1549, Order Concerning Changes of Law at 67 (March 1, 2006) (“*North Carolina Order*”).

<sup>5</sup> Qwest Petition ¶ 4.

<sup>6</sup> Qwest also quotes from the brief the federal government filed, but that quote proves nothing. The quote refers to a “DS1 loop,” which is fully consistent with the Initial Order’s conclusion that DS1 UNE loops must be counted based on their voice grade equivalent capacity. Statements in a legal brief on behalf of the entire U. S. Government, moreover, cannot alter FCC rules and orders.

of the TRRO that would support this interpretation, and the record in this proceeding and the TRRO are devoid of any factual support for Qwest's description of how a customer obtaining DS1 service from Qwest can use this facility. Qwest's contention, moreover, would apply equally to copper loops, digital loop carrier, and other loop plant spare capacity that is dedicated to customer locations and not currently being used to provide service but could be turned up to provide service at any time. Nothing in the TRRO or Rule 51.5 supports such a broad expansion – indeed obliteration – of the concept of “access lines connecting end-user customers with incumbent LEC end-offices for switched services.”

7. Finally, Qwest argues, “Limiting Qwest's digital business lines to only those circuits that are actually activated on that line would fail to produce a consistent measure to account for the potential competition and potential revenue the FCC's test was designed to capture.”<sup>7</sup> Spare capacity on a circuit that Qwest provides to an end user customer does not even arguably represent “potential competition and potential revenue.” Qwest does not claim, much less produce evidence to demonstrate, that customers with DS1 service pay for that service based on how much of the total capacity of the DS1 circuit they use, *i.e.*, that customers pay higher rates the more channels they use of the circuit capacity. To the contrary, customers obtain DS1 service because it is *less* expensive than purchasing even half as many individual business lines as that circuit is capable of providing. There is no opportunity for a CLEC to provision additional lines to Qwest customers who can increase the number of voice grade equivalent channels they are using as part of the existing service from Qwest without additional charge. The

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<sup>7</sup> Qwest Petition ¶ 5.

FCC's test when properly applied – as well as the language of the TRRO – thus *excludes* spare capacity on those circuits from business line counts.

8. Qwest also asks for “clarification” that the Initial Order does not require Qwest to recalculate its business UNE-P loop counts to include circuits only in actual use because the Initial Order also concludes that Qwest’s method of calculating business UNE-P lines is consistent with how Qwest has counted those lines in the past. Conclusion of Law (8), however, refers only to how Qwest distinguishes between residential and business UNE-P lines and cannot reasonably be interpreted to negate the express statement in Conclusion of Law (7) that “ILECs should include actual circuits in use when calculating ILEC-owned business lines *and business UNE-P lines.*”<sup>8</sup> Indeed in the competitive classification dockets, Qwest prided itself on calculating business UNE-P lines based on *actual* circuits in use, and its current proposal to include spare capacity is *not* “consistent with methods the Commission has accepted in prior proceedings.” The Commission thus should not “clarify” that Conclusion of Law (7) does not mean what it says, as Qwest has requested.

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<sup>8</sup> Initial Order ¶ 81 (emphasis added).

**CONCLUSION**

9. The Initial Order correctly interprets Rule 51.5 and the TRRO to require Qwest to count only actual circuits in use when calculating the number of business lines that Qwest owns or provides as business UNE-P lines, and the Commission should not alter that interpretation.

DATED this 22nd day of May, 2006.

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